(1)

No. 06-1610

SEP 10 2007
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ANITA LEE GEORGE – PETITIONER

VS.

DR. RAKESH K. ARORA, et. al., - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

ANITA LEE GEORGE pro se

7350 RALEIGH ST. N.W.

MASSILLON, OHIO 44646

330-371-3810

QUESTION(S) PRESENTED

1. Whether the trial court erred by not granting the Ohio Bureau of Workers Compensation Law Section Subrogation Unit reimbursement for medical bills and wages paid because of the defendants negligence.

2. Whether the trial court erred in granting defendants, Dr. Rakesh K. Arora's and Mercy Medical Centers motion for Summary Judgment.

3. Whether the trial court erred by not considering the genuine material facts that exist, of the plaintiff's allergy to Iodine, Betadine and lack of informed consent falls within the common knowledge.

4. Whether the trial court erred by not granting the Plaitiff, judgment for the damages suffered and for loss of wages.

5. Whether the trial court erred in allowing Defendant Dr. Rakesh K. Arora, and orthopedic surgeon, file an affidavit as an expert witness to have knowledge of Allergy and Clinical Immunology.

6. Whether the trial court erred in allowing Mercy Medical Center to present a Walter Hauser, M.D. an orthopedic surgeon, as an expert witness to have knowledge of Allergy and Clinical Immunology.

7. Whether The Court of Appeals, Fifth Applellate District, erred by not reversing the judgment of the trial court, considering the opinion of the Honorable Judge William P. Hoffman that the appellant's claim Dr. Arora fell below the applicable standard of care does not require expert medical opinion.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

MERCY MEDICAL CENTER

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix _A_ to the petition and is

[ ] reported at _____; or,

[ ] has been designed for publication but is not yet reported; or,

[x] is unpublished.

The opinion of the United States district court appears at Appendix ___ to the petition and is

[ ] reported at _____; or,

[ ] has been designed for publication but is not yet reported; or,

[ ] is unpublished.

OPINIONS BELOW

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _B_ to the petition and is

[ ] reported at _____; or,

[ ] has been designed for publication but is not yet reported; or,

[x] is unpublished.

The opinion of the United States district court appears at Appendix ___ to the petition and is

[ ] reported at _____; or,

[ ] has been designed for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order Denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____(date) in Application No. _____A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____
A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____ and a copy of the order denying rehearing appears at Appendix ____.

JURISDICTION

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. ____A_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUIONAL AND STATUTORY PROVISIONS INVOLVED

The legal standard imposed by most jurisdictions require that in order for a summary judgment to be granted by the Court, the party moving for summary judgment must demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment.

As a matter of law, the Trial Court erred in granting Summary Judgment to Defendants, Dr. Rakesh K. Arora and Mercy Medical.

It appears from the evidence that reasonable minds can come to but one conclusion and viewing the evidence most strongly in favor of the party against whom the motion for summary judgment (Civil Rule 56)

Unlike the majority, the Honorable Judge William B. Hoffman, of The Fifth Appellate Court of Stark County, Ohio State that the Plaintiff, Appellant claims Dr. Arora fell below the applicable standard of care does not require expert medical opinion.

The law does not require expert testimony as a basis for your determination as to the presence of absence of negligence on the part of a hospital in caring for patient when what is alleged to have taken place is so obviously lacking in reasonable care.

Expert testimony or any testimony at all is not always required to establish standard of care, and even where not all factors involved as to how standard of care should be exercised are so obvious to or readily understandable by, lay jury. Kemper v. Builder's Square, Inc (Montgomery 1996) 109 Ohio App.3d.127, 671 N.E. 2d.1104

Expert testimony is not required in every case to determine the extent of person's injuries and pain and suffering, hence, a laymen may testify regarding his pain and suffering. Turner v. Barret (Franklin 198) 68 Ohio App.2d.80, 426 NE.2d.1193, 220.3d.74

CONSTITUIONAL AND STATUTORY PROVISIONS INVOLVED

According to Ohio Revised Code Section 4123.93 et.seq., Bureau of Worker's Compensation (B.W.C.) is entitled to reimbursement of the worker's compensation benefits paid in this claim from the settlement or judgment against the person who caused or contributed to your accident or injury.

STATEMENT OF THE CASE

On September 19, 2005 Defendant, Mercy Medical Center filed a Motion for Summary Judgment.

On September 30, 2005 Defendant, Mercy Medical Center filed on Affidavit of Walter Houser M.D. orthopedic surgeon as an expert witness.

On October 28, 2005 Trial Court granted Summary Judgment to Defendants, Dr. Rakesh K. Arora and Mercy Medical Center.

On November 23, 2005 Plaintiff filed a Notice of Appeal

On June 19, 2006 Judgment Affirmed by Court of Appeals

On August 2, 2006 Plaintiff, Anita Lee George filed Notice of Appeal to The Ohio Supreme Court.

On November 1, 2006 The Supreme Court of Ohio dismissed the appeal.

On November 13, 2006 Plaintiff files Motion For Reconsideration.

On December 27, 2006 The Supreme Court of Ohio denies Motion For Reconsideration.

On August 4, 2003 Plaintiff, Anita Lee George gave Defendant, Dr. Rakesh K. Arora, her Medical History, including information of her allergies to iodine and shellfish.

On November 11, 2003 and November 25, 2003 Plaintiff gave defendant Mercy Medical Center her Medical History, including information of her allergies to iodine and shellfish.

On November 25, 2003 and on January 20, 2004 the Plaintiff had carpal tunnel surgery on the right hand and then on the left hand, and both times Betadine, Iodine was administered.

On May 20, 2005 Plaintiff filed a medical malpractice complaint against the Defendants, Dr. Rakesh K. Arora and Mercy Medical Center.

STATEMENT OF THE CASE

On August 3, 2005 Anita Lee George receive a letter from Ohio Bureau of Workers Compensation, Law Section / Subrogation Unit stating that BWC is entitled to reimbursement of monies paid from the settlement or judgment against the third party.

On September 13, 2005 Defendant Dr. Rakesh K. Arora filed a Motion for Summary Judgment and an Affidavit of Dr. Rakesh K. Arora as expert witness.

REASONS FOR GRANTING THE PETITION

This claim is based upon the Plaintiff, Anita Lee George's allergy to Betadine, Iodine. The plaintiff was deprived of the right to avoid the drug Iodine, despite the Plaintiff's hypersensitivity and allergic reaction to the drug.

This claim is not based upon an orthopedic surgery at all. It is based upon administering the drug Betadine, Iodine without the consent of the patient. This is a drug allergy claim. The Plaintiff has a constitutional right to not give consent for administering the drug Betadine, Iodine to her body.

While negligence claim and informed consent or a lack of consent claim is actionable even if the subject surgery was properly performed and the overall result is beneficial.

It is apparent that the Trial Court erred in further distinguishing informed consent from medical battery are at the heart of this case grounded in negligence (commonly referred to as "informed consent" case) and one based on battery are at the heart of this case and must be kept clearly in mind. Montgomery v. Bazaz Sehgal. 742 A. 2d. at 1130.

Another difference is that wile an informed consent negligence claim requires the presentation of expert testimony in order to establish the physician's duty..., a medical battery claim does not (citation omitted).

Lack of consent to have Betadine, Iodine administered to Plaintiff, Anita Lee George involves the same general concept without regard to whether consent was uninformed or completely lacking. The result is the same - the patient is subjected to a surgical procedure to which she did not consent.

The Plaintiff has satisfied the initial burden that genuine issues of material fact do exist. The Plaintiff, Anita Lee George needs your wisdom and your strength to grant her favor on Petition for Writ of Certiorari.

The American Academy of Allergy Asthma & Immunology is a professional organization recognized as the leader in the specialty of allergy and clinical immunology.

REASONS FOR GRANTING THE PETITION

The AAAAI offers guidelines for Allergy Immunology Medical Expert Opinion Services.

However, in some jurisdiction, criteria for medical witnesses may be inadequate and as a result unqualified physicians may testify concerning issues related to allergy and immunology and the practice of the specialty.

The American Academy of Allergy Asthma and Immunology qualifications for individuals testifying in medical malpractice are current experience and knowledge of the applicable standards of care in the areas about which an opinion is requested.

A medical expert should have a board certification in Allergy and Immunology and maintenance of certification if applicable.

The American Academy of Allergy Asthma and Immunology Guideline and behavior for medical malpractice and expert opinion should be an impartial educator of attorneys, jurors and the court on the subject of allergy practice, clinical immunology.

Therefore the Defendants, Dr. Rakesh K. Arora orthopedic surgeon and Mercy Medical Center, Dr. Walter Hauser M.D. orthopedic surgeon, expert opinion does not qualify for a medical malpractice claim concerning a drug allergy.

The Plaintiff Anita Lee George needs God and your wisdom and your strength to grant a Petition For Writ Of Certiorari. This petition will bring true justice and constitutional rights and payment of damages done. In God We Trust.

COURT OF APPEALS STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ANITA LEE GEORGE

Plaintiff-Appellant,

-vs-

DR. RAKESH K. ARORA, et. al.,

Defendants-Appellees

JUDGES:
Hon. John W. Wise, P.J.
Hon. William B. Hoffman, J.
Hon. Julie A. Edwards, J.

Case No. 2005 CA 00302

OPINION

CHARACTER OF PROCEEDING: Civil Appeal from the Court of Common Pleas, Case No. 2005CV 01652

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY;

APPEARANCES:

For Plaintiff-Appellant

ANITA LEE GEORGE
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For Defendant-Appellee Arora

CHRISTOPHER S. HUMPHREY
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"Appendix A."

For Defendant-Appellee
Mercy

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Filed: PHIL GIAVASIS
CLERK OF COURT OF
APPEALS
STARK COUNTY,
OHIO
06 JUN 19 PM 2:55

"Appendix A."

Wise, P.J.

{¶1} Appellant Anita Lee George appeals from the grant of summary judgment, in favor of Appellees Dr. Rakesh Arora and Mercy Medical Center, in a medical malpractice action in the Stark County Court of Common Pleas. The relevant facts leading to this appeal are as follows.

{¶2} On May 20, 2005, Appellant filed a medical malpractice complaint against Appellee Dr. Arora and Mercy Medical Center, alleging negligence in connection with surgical and post-surgical care rendered in late 2003 and in 2004. On July 13, 2005 appellant filed an amended complaint.

{¶3} On September 13, 2005, Dr. Arora moved for summary judgment, arguing that appellant had not identified her expert witness and therefore could not establish the essential elements of her malpractice claim. In the alternative, Dr. Arora moved for dismissal for want of prosecution. On September 19, 2005, Mercy Medical moved for summary judgment or dismissal on the same grounds.

{¶4} Appellant filed a responsive motion to deny appellees' motions for summary judgment on September 30, 2005.

{¶5} On October 28, 2005, the trial court granted appellees' motions for summary judgment based on appellant's failure to provide necessary expert opinions to support her claims.

{¶6} Appellant filed a notice of appeal on November 23, 2005, and herein raises the following sole Assignment of Error:

{¶7} "I. THE TRIAL COURT ERRED IN GRANTING BOTH DEFENDANT'S (SIC) MOTION FOR SUMMARY JUDGMENT AS A MATTER OF LAW. Stark County, Case No. 2005 CA 00302

{¶8} In her sole Assignment or Error appellant contends the court erred in granting Dr. Arora's and Mercy Medical Center's motions for summary judgment. We disagree.

{¶9} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc. (1987), 30 Ohio St.3d 35, 36.* As such, we must refer to Civ.R. 56© which provides, in pertinent part:

{¶10} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *** A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the part against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. ***"

{¶11} Thus, a trial court may not enter summary judgment if it appears a material fact is genuinely disputed. The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion

and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. The moving party may not make a conclusory assertion that the non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence which
Stark County, Case No. 2005 CA 00302

demonstrates the non-moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of matieral fact for trial. Vahila v. Hall (1997), 77 Ohio St.3d 421, 429, citing Dresher v. Burt (1996), 75 Ohio St.3d 280.

Claim Against Dr. Arora

{¶12} On November 25, 2003, Dr. Arora performed surgery on appellant's right hand for carpal tunnel decompression and release of a trigger finger condition. On January 20, 2004, Dr. Arora performed a similar procedure on appellant's left hand. Appellant's amended complaint alleged that Dr. Arora's post-surgical care was negligent for failing to identify and treat the effects of her reaction to Betadine, which allegedly caused reflex sympathetic dystrophy and other problem, and for allowing her to take a functional capacity test in June 2004, which she claimed further arm and shoulder problems.

{¶13} However, " '[i]n order to establish medical malpractice, it must be shown by a preponderance of evidence that the injury complained of was caused by the doing of some particular thing or things that a physician or surgeon of ordinary skill, care and diligence would not have done under like or similar conditions or circumstances, or by the failure or omission to do some particular thing or things

that such a physician or surgeon would have done under like or similar conditions and circumstances, and that the injury complained of was the direct and proximate result of such doing or failing to do some one or more of such particular things.' " McManaway v. Fairfield Med. Ctr., Fairfield App.No. 05 CA 34, 2006-Ohio-1915, ¶ 69, quoting Bruni v. Tatsumi (1976), 46 Ohio St.2d 127, paragraph one of the Stark County, Case No. 2005 CA 00302

syllabus. Generally, the issue as to whether a physician has proceeded in the treatment of a patient with the requisite standard of care and skill must be determined from the testimony of a medical expert. Clapper v. London (June 15, 1998), Stark App.No. 1997CV00425, citing Bruni, supra, at 130. There is an exception to that rule in cases where the nature of the case is such that the lack of skill or care of the physician is so apparent as to be within the comprehension of laymen, and requires only common knowledge and experience to understand and judge is. Id.

{¶14} In his motion for summary judgment, Dr. Arora averred that it was his opinion to reasonable degree of medical probability that the care and treatment he rendered to appellant met the applicable standard of care. Upon review, we find appellant's claims in this case as to an orthopedic surgeon's standard of care in rendering post-operative care, including treatment for the alleged Betadine reaction, following dual carpal tunnel surgeries are not so apparent as to be matters of common knowledge. Therefore, we find no error in the grant of summary judgment in favor of Dr. Arora on the basis that appellant filed to provide an expert in support of her claim.

Claim Against Mercy Medical Center

{¶15} According to appellant's amended complaint, prior to the aforementioned outpatient surgeries performed by Dr. Arora at Mercy Medical Center on November 25, 2003 and January 20, 2004, respectively, she informed Mercy Medical of her alleged allergy to iodine and shellfish, but that Mercy employees applied a Betadine scrub to her arms. Appellant alleged, inter alia, that this use of Betadine caused her hands to swell and that she shed several layers of skin in

this area, and that it resulted in the failure of the surgeries to relieve her carpal tunnel syndrome.

{¶16} In cases where a plaintiff's injuries are outside the realm of common knowledge, expert medical testimony is required. Moton v. Ford Motor Credit Co. (Dec. 17, 2001), Richland App.No. 01 CA 4, citing Darnell v. Eastman (1970), 23 Ohio St.2d 13, syllabus. In the case sub judice, the dilemma of merely sorting out the physical problems allegedly caused by Mercy Medical Center due to the sue of Betadine from the problems allegedly caused by Dr. Arora's post-operative treatment of appellant was alone sufficient to place this matter outside the ordinary experience of lay jurors. Thus, we also find no error in the grant of summary judgment in favor of Mercy Medical Center.

{¶17} We hold appellees were entitled to judgment as a matter of law upon their summary judgment motions under the facts and circumstances of this case. Appellant's sole Assignment of Error is overruled.

{¶18} For the reasons stated in the foregoing opinion, the decision of the Court of Common Pleas, Stark County, is hereby affirmed.
By: Wise, P.J.
Edwards, J., concurs.
Hoffman, J., concurs separately.

"s/HON. JOHN W. WISE"
HON. WILLIAM B. HOFFMAN
"s/HON. JULIE A. EDWARDS"

{¶19} I concur in the majority's disposition of appellant's assignment of error as it relates to her claim against Dr. Arora. Unlike the majority, I find appellant's claim Dr. Arora fell below the applicable standard of care does not require expert medical opinion. However, I do

believe expert medical testimony is necessary to establish the causal connection between the alleged breach of that standard of care and the damages appellant alleges she sustained as a result. Accordingly, I concur in the decision to overrule this portion of appellant's assignment of error.

{¶20} I further concur in majority's analysis and disposition of appellant's assignment of error as it relates to her claim against Mercy Medical Center.

"s/JUDGE WILLIAM B. HOFFMAN"

IN THE COURT OF APPEALS
FOR STARK COUNTY, OHIO FIFTH APPELLATE DISTRICT

ANITA LEE GEORGE,	:	
Plaintiff-Appellant	:	
-vs-	:	JUDGMENT ENTRY
	:	
DR. RAKESH K. ARORA, et al.	:	
Defendants-Appellees	:	
	:	Case No. 2005 CA 00302

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed.

Costs to appellant.

"s/HON. JOHN W. WISE"
"s/HON. WILLIAM B. HOFFMAN"
"s/HON JULIE A. EDWARDS"

Filed: PHIL GIAVASIS
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO
06 JUN 19 PM 2:55

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

ANITA LEE GEORGE,	)	**Case No: 2005CV01652**
Plaintiff,	)	
-vs-	)	**Judge Sara Lioi**
	)	
DR. RAKESH K. ARORA, et al.	)	
Defendants.	)	**JUDGMENT ENTRY**
	)	

This matter came before the Court upon the following:

1. The motion of the defendant, Dr. Rakesh K. Arora ("Dr. Arora"), for summary judgment and/or to dismiss for lack of prosecution;
2. The motion of the defendant, Mercy Medical Center ("MMC"), for summary judgment and/or to dismiss for lack of prosecution;
3. The combined response o the plaintiff, Anita George ("George"), to the aforementioned motions;
4. Dr. Arora's reply; and,
5. MMC's reply.

Upon review, the Court finds the motions for summary judgment of Dr. Arora and MMC well-taken[1].

---

[1] Because the Court finds that Dr. Arora and MMC are entitled to summary judgment, the Court will not address the motions as they pertain to dismissal for want of prosecution.

I.
Facts

George has filed the instant action alleging claims of medical malpractice against Dr. Arora and MMC stemming from two outpatient surgeries performed on George by Dr. Arora at MMC on November 25, 2003, and January 20, 2004. As against MMC, George claims that during the surgeries, MMC applied a Betadine scrub and Betadine paint to her arms, despite the fact that MMC was informed that she was allergic to iodine and shellfish. As a result of application of the Betadine, George claims her hands swelled and shed approximately five layers of skin each, and, further, that the use of Betadine resulted in the failure of the surgeries to release her carpal tunnel syndrome.

As to Dr. Arora, George claims that he was negligent in his care and treatment of her post-operatively after both surgeries, as he did not detect the effect of Betadine in her incisions from the surgery, he released her to take a functional capacities examination that required her to test lifting pound weights, he failed to refer her to a specialist or neurologist, and he failed to further treat her, thus "abandoning" her.

II.
Law and Analysis

Summary judgment is appropriate where no genuine issues of material fact exist and the undisputed facts entitle the moving party to judgment as a matter of law. Ohio Civil Rule 56©; Harless v. Willis Day Warehousing, Co., Inc. (1978), 54 Ohio St.2d 64, 375 N.E.2d 264, outlined more specifically the duties of the parties in summary judgment proceedings as follows:

> Accordingly, we hold that a party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, if the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.

See also, Vahila v. Hall (1997), 77 Ohio St.3d 421, 429, 674 N.E.2d 1164, citing, Dresher v. Burt (1966) 75 Ohio St.3d 280, 662 N.E.2d 264.

In order to prove a medical malpractice claim, George must prove the following elements by a preponderance of the evidence: (1) the existence of a standard of care; (2) a breach by the Defendant of the standard of care; and, (3) that the

injury complained of was a direct and proximate cause of the breach. Bruni v. Tatsumi (1976), 46 Ohio St.2d 127, at Syllabus. "The issue as to whether the physician or surgeon has proceeded in the treatment of a patient with the requisite standard of care and skill must ordinarily be determined from the testimony of experts. Rogoff v. King (1993), 91 Ohio App.3d 438, 445, siting Bruni, supra; Chupka v. Rigsby (1991), 75 Ohio App.3d 795; Buerger v. Ohio Dept. of Rehab. & Corr. (1989), 64 Ohio App.3d 394; Johnson v. Hammond (1988), 47 Ohio App.3d 125. However, such expert testimony is not required when "the lack of skill or care of the physician or surgeon is so apparent as to be within the comprehension of laymen and requires only common knowledge and experience to understand and judge it." Id.

Further, in order to prove the causation element in a medical malpractice claim, George must demonstrate that a defendant doctor's breach was the "but for" causation of the injury. Starkey v. St. Rita's Medical Center (1997), 117 Ohio App.3d 164. Such causation must be proven "through medical expert testimony in terms of probability to establish that the injury was, more likely than not, caused by the defendant's breach." Roberts v. Ohio Permanente Med. Group Inc., (1996), 76 Ohio St.3d 483, 1996-Ohio-375.

On July 14, 2005, this Court issued a Case Management and Trial Order in which George was required to identify her expert witnesses and provide reports from said witnesses to opposing counsel on or before September 12, 2005. To date, however, George has not identified any expert witnesses or provided expert reports relative to her claims against Dr. Arora and MMC, and has not sought leave from this Court for an extension of time in which to do so. Instead, she argues that the alleged breaches of the standard of care by Dr. Arora and MMC were so obvious that they are within the comprehension for a layperson, and only require common

knowledge and experience to understand. This Court disagrees with her contention.

Both Dr. Arora and MMC have each submitted expert opinions establishing that neither breached the standard of care in their care and treatment of George. In reviewing the allegations and evidence properly before the Court, the Court finds that the alleged breaches by Dr. Arora and MMC are not so obvious as to obviate the need for expert testimony regarding same. Specifically, George is asserting that Dr. Arora's post-operative care, instructions, and treatment fell below the standard of care for an orthopedic surgeon. The Court finds that the standard imposed upon orthopedic surgeons with respect to post-operative care is highly complex and technical and is beyond the ordinary comprehension of a layperson. Similarly, as to George's claims against MMC, the Court finds that an expert is required to opine as to whether the use of Betadine on an individual with an iodine allergy was a breach of the standard of care owed by a hospital to a surgical patient. Inasmuch as George has failed to provide any evidence that refutes the expert testimony presented by Dr. Arora and MMC, George has failed to create an issue of fact relative to whether either defendant breached the standard of care.

Assuming, arguendo, that there were sufficient evidence to create an issue of fact with respect to the alleged breaches, Dr. Arora and MMC would still be entitled to judgment in their favor. The evidence before the Court, by way of the expert affidavits, is that the alleged acts or omissions of Dr. Arora and MMC did not proximately cause the injuries about with George complains. In response, George has failed to present expert testimony to demonstrate a question of fact as to causation.

Specifically, as to MMC, George claims that the use of Betadine on her, despite her iodine allergy, caused her hands to swell and the surgeries on her hands to fail. The Court finds that expert testimony is required to demonstrate a question of fact as to the proximate cause of these alleged injuries. Likewise, as to Dr. Arora, the Court finds that expert testimony is required to demonstrate that his post-operative care and instruction and "abandonment" of George resulted in her alleged injuries. Therefore, because George has failed to present expert testimony relative to the causation element of her claims, the Court finds that her claims fail as a matter of law.

III.

Conclusion

Construing the evidence most strongly in favor of George, and for the reasons set forth herein, as well as those stated in the respective memoranda of Dr. Arora and MMC, the Court finds that there are no genuine issues of material fact relative to George's claims, and that Dr. Arora and MMC are entitled to summary judgment in their favor as a matter of law. As such, the motions of Dr. Arora and MMC are, hereby, **GRANTED.**

IT IS SO ORDERED.

"s/HON. SARA LIOI"

NOTICE TO THE CLERK:
FINAL APPEALABLE ORDER

IT IS HEREBY ORDERED that notice of the foregoing Judgment Entry shall be served on all parties of record within three (3) days after docketing of this Entry and the service shall be noted on the docket.

"s/HON. SARA LIOI"

c: Anita George, pro se
Christopher S. Humphrey
Alicia M. Wyler

Filed: OCT 28 2005
PHIL G. GIAVASIS
STARK COUNTY OHIO
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS, STARK COUNTY, OHIO

PHIL G. GIAVASIS
STARK COUNTY CLERK OF COURTS
NOTICE OF FINAL APPEALABLE ORDER

2005CV01652

ANITA LEE GEORGE VS DR RAKEAH K ARORA ET AL

YOU ARE HEREBY NOTIFIED THAT AN ENTRY WHICH MAY BE A FINAL APPEALABLE ORDER HAS BEEN FILED WITH THE CLERK OF THE COMMON PLEAS COURT ON Oct 28 2005.

ANITA LEE GEORGE
3305 BERRYWOOD AVE SW
CANTON OH 44706

PHIL G. GIAVASIS
CLERK OF COURTS
STARK COUNTY OHIO

BY: "s/ HOGH, "Deputy Clerk
November 01, 2005

THE SUPREME COURT OF OHIO

ANITA LEE GEORGE	)	Case No: 06-1465
	)	
v.	)	
	)	ENTRY
	)	
DR. RAKESH K. ARORA, et. al.,	)	
	)	

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

(Stark County Court of Appeals; No. 2005CA00302)

"s/THOMAS J. MOYER"
Chief Justice

Filed: NOV 01 2006
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

"Appendix C."

THE SUPREME COURT OF OHIO

ANITA LEE GEORGE	)	Case No: 06-1465
	)	
v.	)	
	)	
	)	RECONSIDERATION
	)	ENTRY
DR. RAKESH K. ARORA, et. al.,	)	
	)	Stark County

It is ordered by the Court that the motion for reconsideration in this case is denied.

(Stark County Court of Appeals; No. 2005CA00302)

"s/THOMAS J. MOYER"
Chief Justice

Filed: DEC 27 2006
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

"Appendix D."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Anita L. George

Date: March 24, 2007

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANITA LEE GEORGE – PETITIONER
VS.
DR. RAKESH K. ARORA, et. al., - RESPONDENT(S)

PROOF OF SERVICE

I, ANITA LEE GEORGE , do swear or declare that on this date, March 24, 2007, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United State mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows: Christopher S. Humpherey, attorney for Dr. Rakesh K. Arora, P.O. Box 35548, Canton, Ohio 44735 and Alicia M. Wyler, attorney for Mercy Medical Center, P.O. Box 24213, Canton, Ohio 44701

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 24, 2007

Anita L. George

No. 06-1610

IN THE

SUPREME COURT OF THE UNITED STATES

ANITA LEE GEORGE – PETITIONER

VS.

DR. RAKESH K. ARORA, et. al., - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF OHIO

PETITION FOR REHEARING

ANITA LEE GEORGE pro se

3420 WESTVIEW AVE. N.W.

CANTON, OHIO 44709

330-371-3810

No. 06-1610

IN THE

SUPREME COURT OF THE UNITED STATES

ANITA LEE GEORGE – PETITIONER

VS.

DR. RAKESH K. ARORA, et. al., - RESPONDENT(S)

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PETITION FOR REHEARING

The Petitioner Anita Lee George respectfully petition this Court for Rehearing pursuant to Rule 44.1

INTRODUCTION

On November 25, 2003 and on January 20, 2004 the Plaintiff, Petitioner had carpal tunnel surgery on the right hand and then on the left hand and both times Betadine Iodine was administrated in spite of Anita Lee George's known allergy to Iodine.

The carpal tunnel surgery was done to relieve the swelling in the patient's hands and wrist. This operation was done to enable the patient to continue to do a satisfactory work performance at her place of employment. She had worked a Crown, Cork and Seal for nearly fifteen years.

Since Anita Lee George was not physically able to return to her former job, she has been terminated. A state examination done by Ohio Bureau of Workers Compensation (B.W.C.) stated that she was at the maximum medical improvement and that she could not return to heavy lifting and repetitive work. This examination was done by Paul C. Martin M.D., FACPM, Certified Independent Medical Examiner.

LACK OF INFORMED CONSENT

It is only the physician and allied health care provider who is permitted in our society to inject a drug or chemical into our body to cut into our body with a knife or scalpel, and/or to invade our body with various other therapeutic methods and devices.

Obviously, under other circumstances, such an invasion of our personal physical integrity would be a criminal outrage. However, when trained physicians and health care providers are appropriately "invading" our body in a skilled manner, they are doing exactly what we and society in general wish them to do.

It is the role of the physician and health care provider to "heal". There is no greater nor more noble role in our society.

However, the physician or health care provider must have our consent to so act. The consent must be "informed". While the hospital or health care providers do not per se establish the legal elements for liability, it is appropriate to understand just how hospitals and health care providers perceive this subject.

The Joint Commission of Accreditation of Hospitals states the patient has the right to reasonable informed participation in decisions involving his health care.

The patient should not be subjected to any procedure without his voluntary, competent, and understanding consent.

Where medically significant alternatives for care or treatment exist, the patient shall be so informed. The patient Anita Lee George did not consent to have Betadine, Iodine administered to her body in spite of her terrible allergic reaction to Iodine. The patient should have been given an alternate drug.

The consent for a medical procedure must be premised on solid medical history taking. For a care giver to obtain a valid consent necessarily implies a solid understanding of the patients medical history, risk factors, complications, allergies, intolerance, and the like can come to light only through thorough patient medical history.

There are warning labels on Betadine, Iodine drug products, stating not to use the drug on persons who are allergic to Iodine.

Therefore, the Court ignored the evidence and the genuine issue of material fact does exist in this claim. The Plaintiff, Petitioner lost her job because of the negligent surgery that delayed her return back to work.

The Honorable Judge William P. Hoffman of the Fifth Appellate District Court of Appeal gave his opinion, that Anita Lee George's claim Defendant, Respondent; Dr. Arora fell below the applicable standard of care does not require expert medical opinion.

There the Ohio Bureau of Worker's Compensation is entitled to reimbursement of the worker's compensation benefits paid to the Petitioner over a three year period that totaled to about $130,000 in Government monies.

The Petitioner, Anita Lee George received a letter sent by Tom W. of the Ohio Bureau of Worker's Compensation Law Section/Subrogation, in Columbus, Ohio.

According to Ohio Revised Code Section 4123, 93 et. seq., B.W.C. is entitled to reimbursement of the worker's compensation benefits paid in this claim from the settlement or judgment against the person who caused or contributed to an accident or injury.

CONCLUSION

Based on the foregoing reasons, the Petitioner request that her Petition for Rehearing be granted. **In God We Trust**

Respectfully submitted,

Anita L. George

Anita Lee George pro se
3420 Westview Ave. N.W.
Canton, Ohio 44709
330-371-3810

Date: November 27, 2007

CERTIFICATE OF COUNSEL

As the Petitioner, I hereby certify that this Petition for Rehearing is presented in good faith and not for purposes of delay.

Anita L. George

Anita Lee George pro se

No. 06-1610

IN THE
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PROOF OF SERVICE

I, ANITA LEE GEORGE , do swear or declare that on this date, November 27, 2007, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United State mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows: Christopher S. Humpherey, attorney for Dr. Rakesh K. Arora, Buckingham, Doolittle & Burroughs, 4518 Fulton Drive N.W. P.O. Box 35548, Canton, Ohio 44735-5548 and Alicia M. Wyler, attorney for Mercy Medical Center, Suite 300, 200 Market Avenue North P.O. Box 24213, Canton, Ohio 44701-4213

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 27, 2007

Anita L. George